

Appln No. 10/028,745

Amdt date January 5, 2004

Reply to Office action of August 4, 2003

REMARKS/ARGUMENTS

In the Office action dated August 4, 2003, the Examiner rejected claims 39 and 40 under 35 U.S.C. § 112 and rejected claims 35, 36 and 38 under 35 U.S.C. § 103. Claims 37, 39 and 40 were objected to as being dependent upon a rejected base claim, but were deemed allowable if rewritten in independent form including all limitations of the base claim and any intervening claims and, for claims 39 and 40, to overcome the rejection(s) under 35 U.S.C. § 112.

By this Amendment, Applicant has amended claims 35 - 39 and added new claims 47 and 48. In addition, Applicant has amended a typographical error in the specification. Reconsideration and reexamination are hereby requested for claims 35-40 and 47-48 that are now pending in this application.

Amendments to the Claims

Applicant has rewritten claims 37 and 39 in independent form as new claims 47 and 48, respectively. Applicant submits that these claims are now allowable in accordance with the Examiner's assessment in the Office action.

Claim 35 has been amended to rephrase certain language in the claim. In addition, Applicant has added limitations relating to "locating at least one heat generating electrical component in the first stage controlled temperature environment" and "locating at least one optical component in the second stage controlled temperature environment."

Claims 36 and 37 have been amended for conformity and proper antecedent basis in view of amended claim 35.

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Claim 39 has been amended to replace "housing" with "module" to correct a typographical error and ensure sufficient antecedent basis.

Response to the Rejection of the Claims Under 35 U.S.C. § 112

The Examiner rejected claims 39 and 40 under 35 U.S.C. § 112, second paragraph, on the grounds that there is insufficient antecedent basis for "the heat sink structure" in claim 39. Applicant has amended claim 38 upon which claim 39 depends to recite "a heat sink structure." Accordingly, Applicant requests reconsideration of the rejection under 35 U.S.C. § 112.

Response to the Rejection of the Claims Under 35 U.S.C. § 103

The Examiner rejected claims 35, 36 and 38 under 35 U.S.C. § 103(a) as being unpatentable over well-known domestic refrigerator or, as an alternative, over Hutchison et al., U.S. Patent No. 6,310,772.

In making the rejection that the claimed method reads on a domestic refrigerator, the Examiner cites *Ex parte Masham*, 2 U.S.P.Q.2D 1647 (1987), for the proposition that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. The Examiner's reliance on *Ex parte Masham* is misplaced because the basis for the decision there was that there was a "prior art apparatus" that satisfies "the claimed structural limitations" of the "claimed apparatus." This case is inapplicable to the method of claims 35, 36 and 38.

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Moreover, amended claim 35 is distinguishable over the cited art. For example, the cited art, considered either separately or in combination, does not teach or suggest a method of "thermally controlling a WDM multiplexer module" comprising "locating at least one heat generating electrical component in the first stage controlled temperature environment" and "locating at least one optical component in the second stage controlled temperature environment." Accordingly, Applicant submits that it would not have been obvious to a person of ordinary skill in the art to arrive at each and all of the method steps claimed in amended claim 35.

Claims 36 - 40 that depend on claim 35 also are patentable over the cited references for the reasons set forth above. In addition, these dependent claims are patentable over these references for the additional limitations that the dependent claims contain.

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Moreover, amended claim 35 is distinguishable over the cited art. For example, the cited art, considered either separately or in combination, does not teach or suggest a method of "thermally controlling a WDM multiplexer module" comprising "locating at least one heat generating electrical component in the first stage controlled temperature environment" and "locating at least one optical component in the second stage controlled temperature environment." Accordingly, Applicant submits that it would not have been obvious to a person of ordinary skill in the art to arrive at each and all of the method steps claimed in amended claim 35.

Claims 36 - 40 that depend on claim 1 also are patentable over the cited references for the reasons set forth above. In addition, these dependent claims are patentable over these references for the additional limitations that the dependent claims contain.

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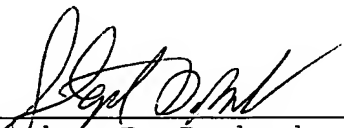
SUMMARY

In view of the above amendment and remarks it is submitted that the claims are patentably distinct over the cited references and that all the rejections to the claims have been overcome. Reconsideration and reexamination of the above Application is requested.

Respectfully submitted,

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